

CHAPTER 13

DEPLOYMENT CONTRACTING AND BATTLEFIELD ACQUISITION

REFERENCES

1. Army Federal Acquisition Regulation Manual No. 2 (Contingency Contracting), Nov. 1997.
2. NAVSUP Instruction 42370.37A.
3. Marine Corps Order (MCO) P4200.15G, Appendix B.
4. Air Force FAR Supplement, Appendix CC – Contingency Operational Contracting Support Program (COCSP), AFAC 96-3, March 31, 2000.
5. Joint Pub. 1-06, *Joint Tactics, Techniques, and Procedures for Financial Management During Joint Operations*, 22 December 1999.
6. Joint Pub. 4-0, *Doctrine for Logistics Support of Joint Operations*, 6 April 2000 (Chapter V, Contractors in Theater).
7. AR 700-137, *Logistics Civil Augmentation Program (LOGCAP)*, 16 Dec. 85.
8. AR 715-9, *Contractors Accompanying The Force*, 29 Oct. 99.
9. DA Pam. 715-16, *Contractor Deployment Guide*, 27 Feb. 98.
10. AMC PAM 700-30, *Logistics Civil Augmentation Program (LOGCAP)*, 31 Jan 00.
11. AMC LOGCAP Battle Book, 31 Jan 00.
12. FM 100-10-2, *Contracting Support on the Battlefield*, 15 Apr 99.
13. DA PAM 700-31, *Commander's Handbook for Peacekeeping Operations* (A Logistics Perspective), 1 Jul 94.
14. DA PAM 700-15, *Logistics Support of United Nations Peacekeeping Forces*, 1 May 86.
15. DA PAM 690-80/NAVSO P-1910/AFM 40-8/MCO P12910.1, *Use and Administration of Local Civilians in Foreign Areas During Hostilities*, 12 Feb 71.
16. AMC PAM 715-18, *AMC Contracts and Contractors Supporting Military Operations*, 26 Jun. 00.
17. AMC LOGCAP Homepage: http://www.amc.army.mil/dcs_logistics/lg-ol/infopage.html.
18. Air Force Contract Augmentation Program (AFCAP) homepage: <http://www.afcesa.af.mil/Directorate/CEX/AFCAP/afcap.html>.
19. Joint Pub. 4-07, *Joint Tactics, Techniques, and Procedures for Common-User Logistics During Joint Operations*, 11 June 2001.
20. Joint Test Pub. 4-08, *Joint Doctrine for Logistic Support to Multinational Operations*, 15 May 2001.
21. Defense Acquisition Deskbook, *Contractor Support in the Theater of Operations*, Deskbook Supplement, 28 March 2001. Available at: <http://web1.deskbook.osd.mil/data/001QZDOC.DOC>.
22. FM 100-21, *Contractors on the Battlefield*, 26 Mar 00.
23. USAF Material Command Contingency Contracting Web site: <https://www.afmc-mil.wpafb.af.mil/organizations/HQ-AFMC/PK/pko/gotowar.htm>.

INTRODUCTION¹

Operations DESERT SHIELD/DESERT STORM highlighted the role that contracting plays in military operations. Contracting became an effective force multiplier for deployed forces. Operations DESERT SHIELD/DESERT STORM also revealed that a challenging problem for deployed forces is compliance with contract and fiscal law while conducting

¹ For a complete overview of contracting in an operational setting, see CONTRACT & FISCAL L. DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, CONTRACT ATTORNEYS DESKBOOK, current edition, Chapter 30 *Contract and Fiscal Law for Deploying Forces*. The current version of the deskbook is available on either JAGCNET: <http://jagcnet.army.mil/ContractLaw> (registration required) or on the TJAGSA homepage: <http://www.jagcnet.army.mil/TJAGSA> (no registration or password required).

military operations in the field. Recent operations in Somalia, Haiti, Bosnia and Kosovo, and in support of the Global War on Terrorism (GWOT), proved again the value of contracted support to a deployed force. Attorneys participating in future deployments must be prepared to handle contract and fiscal law issues.

The primary reason our forces conduct deployment contracting is because it serves as a force multiplier. It is a means of leveraging our assets and reducing our dependence on CONUS based logistics. In addition to serving as a force multiplier, deployment contracting also provides some collateral benefits. Some collateral benefits of deployment contracting are: (1) contracting with local sources frees-up our limited air and sea lift assets for other higher priority needs; (2) contracting with local contractors reduces the time between identification of needs and the delivery of supplies or performance of services; and (3) contracting with local contractors provides alternative sources for supplies and services.

Applicable Law During a Deployment. Contracting during a deployment involves two main bodies of law: international law, and U.S. contract and fiscal law. Attorneys must understand the authorities and limitations imposed by these two bodies of law.

International Law.

The Law of War—Combat.

The Law of War—Occupation (may be directly applicable, or followed as a guide when no other laws clearly apply, such as in Somalia during Operation Restore Hope).

International Agreements-- A variety of international agreements may impact contracting operations in OCONUS locations.

Status of Forces Agreements (SOFA) or other status agreements may contain provisions impacting upon contracting activities.

Specific treaties or agreements may also impact contracting activities. E.g., the Trade Agreements Act.

U.S. Contract and Fiscal Law.

Armed Services Procurement Act of 1947, as amended. 10 U.S.C. §§ 2301-31.

Federal Acquisition Regulation (FAR) and Agency Supplements.

Fiscal Law. Title 31, U.S. Code; DoD Financial Management Reg. (DoD 7000.14-R), DFAS-IN 37-1; DFAS Manual 37-100-XX (XX= current FY).

Executive Orders and Declarations.

Wartime Funding. Congressional declarations of war and similar resolutions may result in subsequent legislation authorizing the President and heads of military departments to expend appropriated funds to prosecute the war as they see fit. However, recent military operations (Grenada, Panama, Desert Shield/Desert Storm,, Haiti, Somalia, Bosnia, Kosovo, and even the GWOT) were not declared “wars.”

Wartime Contract Law. Congress has authorized the President and his delegates to initiate contracts that facilitate national defense notwithstanding any other provision of law. Pub. L. No. 85-804, *codified at* 50 U.S.C. § 1431-1435; Executive Order 10789 (14 Nov. 1958); FAR Part 50. These powers are extremely broad, but authority to obligate funds in excess of \$50,000 may not be delegated lower than the Army Secretariat. Earlier versions of this statute were the basis for the wholesale overhaul of defense acquisition at the beginning of World War II. This may occur again in a future general conflict. Although these are broad powers, Congress still must provide the money to pay for obligations incurred under this authority.

PREPARATION FOR DEPLOYMENT CONTRACTING

The Unified Command or MACOM controlling the deployment will set policy and procedure affecting contracting plans. Coordinate with the controlling headquarters and other MACOMs that will have roles in expected deployments. OPLANs will determine when the contracting personnel will deploy. The contracting element generally consists of contracting officers, ordering officers, legal and other support personnel.

General Considerations. Recent operations have demonstrated the need to begin planning early for contracting during a deployment. The personnel necessary for effective contracting must be identified and trained. Units must develop plans for contracting personnel/teams to deploy with the organization. Units must realize that assets for contracting normally will come from their organic resources. Judge Advocates must also review any existing CONPLANS or OPLANs, paying particular attention to the acquisition and/or contracting appendices. Reserve assets may provide some contracting support. Coordinate in advance to determine the extent of this support. Prior to deployment, the command should determine who will have the authority to approve requests for contract support. An acquisition review board should be established in any major deployment.²

Contracting Officer (KO) / Ordering Officer Support. Commanders should identify KO/ordering officer support requirements. Only contracting officers and their authorized representatives (e.g., ordering officers) may obligate government funds. KOs award, administer, or terminate contracts and make determinations and findings permitted by statute and regulation. FAR 1.602-1.

Commanders should ensure that KOs and ordering officers are properly appointed and trained. The Head of Contracting Activity (HCA), an attaché, a chief of a foreign mission (Army), or certain officials in the Army Secretariat may appoint KOs. FAR 1.603; AFARS 5101.603-2. An HCA may delegate appointment power to a Principal Assistant Responsible for Contracting (PARC). This is the official who usually exercises authority to hire and fire KOs.

The chief of the contracting office may appoint ordering officers. AFARS 5101.603-1(2). There is no specific guidance on appointing ordering officers—common practice is to appoint a commissioned officer, warrant officer, or noncommissioned officer. Ordering officers usually are not part of the contracting element, but are a part of the forward units. Ordering officers make purchases with imprest funds, make over the counter purchases with SF 44s, and issue delivery orders against existing indefinite delivery contracts awarded by KOs. AFARS 5101.603-1-90. Ordering officers may also be government credit card holders. AFARS 5113.2. KOs and ordering officers are subject to limitations in their appointment letters and procurement statutes and regulations. Contracting authority may be limited by dollar amount, subject matter, purpose, time, etc., or may be unlimited. Typical limitations are restrictions on the types of items that may be purchased and on per purchase dollar amounts.

Administrative Needs. Deployable units should assemble contracting support kits. Package and label kits in footlockers or similar containers for easy deployment. Administrative needs forgotten may be difficult to obtain in the area of operations. The kits should contain a 90-day supply of administrative needs and all essential references.

References.

Statutes: Titles 10, 22, 31, 41, and 50 of U.S. Code.

Regulations: FAR, DFARS, AFARS/AFFARS/NAPS, DFAS-IN 37-1, DFAS-IN Manual 37-100- XX (XX= current FY), DoD Reg. 7000.14-R, vol. 5, and command supplements to these regulations. It is also recommended that you deploy with a paper copy of the FAR as a backup to electronic versions. Take CD-ROM contract references and LEXIS/WESTLAW software, as well as necessary computer and communications equipment. The CLAMO CD-ROM:

² Ensure that the G-4/J-4 for the operation reviews and approves requirements, to avoid purchases better filled through the supply system. AFARS Manual No. 2, paras. 2-3, 2-4. An “acquisition review board,” or “ARB,” or a “Joint Acquisition Review Board” or “JARB now primarily accomplishes verification of requirements” in the joint environment. See, AMC LOGCAP Battle Book, at 37. The Joint Force Contracting Office(s) or the JARB will ensure that acquisitions are coordinated to preclude inter-service and inter-component competition for scarce resources in the theater. JOINT PUB. 3-57, JOINT DOCTRINE FOR CIVIL-MILITARY OPERATIONS (8 Feb. 2001), at III-21.

Deployed Judge Advocate Resource Library, current edition, contains a complete copy of the FAR, FAR Matrix, and the GAO Redbook.

Contract Forms.

These are essential. The contracting element should ensure it brings a 90-day supply of: Standard Form (SF) 44s (Purchase Order-Invoice-Voucher), DD Form 1155s (Purchase Order), SFs 26, 30, 33, and 1442 (solicitation, award, and modification, and construction solicitation forms), DA Form 3953 (Purchase Request and Commitment), and form specifications for common items, such as: Subsistence items; Labor and Services; Fuel; Billeting; Construction Materials; Fans, Heaters, linguists/translators, etc.

Typing contract documents manually is tedious and time-consuming. Contracting elements should deploy with Standard Army Automated Contracts System (SAACONS) software loaded on personal computers for automated production of contract documents. Otherwise, ensure the contracting office obtains the FAR in CD form, together with software necessary to lift FAR provisions from the CD to word-processing documents. Translation of contract forms, specifications, and other provisions also should be obtained before deployment if possible.

Other Logistical Needs.

Bring maps, area phone books, catalogs with pictures, etc., to assist in finding and dealing with potential vendors in the deployment theater. Also bring desks, typewriters, computers, paper, etc., as well as personnel trained to use necessary equipment and software. Arrange for translator support for the contracting element (coordinate with Civil Affairs unit in COSCOM or TAACOM; contact embassy if necessary to obtain this support). Deploy with a notebook computer, including a CD-ROM drive.

Finance and Funding Support. Finance specialists are not part of the contracting element and not under its control. A deploying unit should train its personnel to properly account for funds when they must do so without the aid of a finance office. Generally, deploying units will receive a bulk-funded DA Form 3953, Purchase Request and Commitment (PR&C)³ if requested to support needs while deployed.

Consider establishing an imprest fund in advance of deployment notification.⁴ FAR 13.4; DFARS 213.4; DoD Reg. 7000.14-R, vol. 5, paras. 020906 to 020907. Imprest fund cashiers should receive training in their duties, liabilities, and the operation of an imprest fund prior to deployment. Installation commanders may establish funds up to \$10,000. An imprest fund operates like a petty cash fund; it is replenished as payments are made from it. The fund should include local currency if available before deployment. FAR 25.501 requires that off-shore procurements be made with local currency, unless the contracting officer determines the use of local currency inappropriate (e.g., if a SOFA exists and it allows use of U.S. dollars).

Finance personnel or designees (e.g., Class A agents) hold money and will accompany an ordering officer to actually make payment if a vendor will not take a SF 44 or other contract document and invoice the U.S. later. Identify the deploying Class A paying agents, and ensure they are appointed and trained as necessary.

CONTRACTING DURING A DEPLOYMENT

This section discusses various methods used to acquire supplies and services. It begins with a general discussion of seeking competition, and discusses specific alternatives to acquiring supplies and services pursuant to a new contract to meet the needs of a deploying force. The key to successful contracting operations is the proper training and appointment of contracting personnel. Units should verify that contracting support personnel have received necessary training. If time permits, provide centralized refresher training. Also review warrants and letters of appointment for contracting officers

³ For the Department of the Navy, use the NAVCOMPT Form 2275/2276; for the Air Force, use AF Form 9 (O&M).

⁴ Effective 1 October 1996, use of imprest funds by DoD activities in CONUS is no longer authorized. Effective 1 October 1997, use of imprest funds is not authorized OCONUS. However, the use of imprest funds is authorized for use in contingency operations. See message, Under Secretary of Defense (Comptroller), Subject: Elimination of Imprest Funds (28 March 1996). See also, DoD Reg. 7000.14-R, vol. 5, ch.2, para. 0208.

and ordering officers for currency. Ensure that personnel know the limitations on their authority. Review and update contents of contracting support kits. Ensure that references include latest changes.

Competition Requirements. The Competition in Contracting Act, 10 U.S.C. § 2304, requires the government to seek competition for its requirements. See also FAR 6.101. In general, the government must seek for full and open competition by providing all responsible sources an opportunity to compete. No automatic exception is available for contracting operations during deployments.

The statutory requirement for full and open competition for purchases over the simplified acquisition threshold creates a 45-day minimum procurement administrative lead-time (PALT) for solicitations issued, and contracts awarded and performed, within the Continental U.S. (CONUS). The 45-day PALT results from a requirement to publish notice of the proposed acquisition 15 days before issuance of the solicitation (thru synopsis of the contract action on Fedbizopps.gov) then to provide a minimum of 30 days for offerors to submit bids or proposals. Three additional time periods extend the minimum 45-day PALT: 1) time needed for requirement definition and solicitation preparation; 2) time needed for evaluation of offers and award of the contract; and 3) time needed after contract award for delivery of supplies or performance of services. Exceptions to the usual requirement for full and open competition include:

(1) Unusual and compelling urgency; this exception authorizes a contract action without full and open competition. It permits the contracting officer to limit the number of sources solicited to those who are able to meet the requirements in the limited time available. FAR 6.302-2. This exception also authorizes an agency to dispense with publication periods (minimum 45-day PALT) if the government would be seriously injured by this delay. It also allows preparation of written justifications for limiting competition after contract award. FAR 6.302-2(c)(1). DFARS specifically states the unusual and compelling urgency exception is appropriate when supplies, services, or construction is needed at once because of fire, flood, explosion, or other disaster. DFARS 206.302-2.⁵

(2) National security is another basis for limiting competition; it may apply if the existence of the operation or the acquisition is classified. Mere classification of specifications generally is not sufficient to restrict the competition, but it may require potential contractors to possess or qualify for appropriate security clearances. FAR 6.302-6.

(3) Public interest is another exemption to full and open competition, but only the head of the agency can invoke it. FAR 6.302-7. For defense agencies, the determination may only be made by the Secretary of Defense. DFARS 206.302-7.

Use of the urgent and compelling, national security, and public interest exceptions requires a “Justification and Approval,” (J&A). FAR 6.303. Approval levels for justifications are listed in FAR 6.304:

Actions under \$500,000: the contracting officer.

Actions from \$500,000 to \$10 million: the competition advocate.

Actions from \$10 million to \$50 million: the HCA or designee.

Actions above \$50 million: the senior procurement executive; for the Army this is the Assistant Secretary of the Army for Research, Development, and Acquisition (ASA(RDA)).

Contract actions awarded and performed outside the United States, its possessions, and Puerto Rico, for which only local sources will be solicited, generally are exempt from compliance with the requirement to synopsis the acquisition in FedBizOpps.gov. These actions therefore may be accomplished with less than the normal minimum 45-day PALT, but they are not exempt from the requirement for competition. See FAR 5.202 (a)(12); see also FAR 14.202-1(a) (thirty-day bid preparation period only required if requirement is synopsized). Thus, during a deployment, contracts may be awarded with full and open competition within an overseas theater faster than within CONUS, thus avoiding the need for a J&A

⁵ The unusual and compelling urgency exception was used by DLA to procure firefighting boots on short notice during the 2000 wildfire season. Although ready to deploy, the 20th Engineer Battalion, 1st Cavalry Division could not execute their mission without appropriate equipment. Due to the severity of the fire season, normal stockpiles of firefighting equipment had been exhausted.

for other than full and open competition for many procurements executed in rapid fashion. Obtain full and open competition under these circumstances by posting notices on procurement bulletin boards, soliciting potential offerors on an appropriate bidders list, advertising in local newspapers, and telephoning potential sources identified in local telephone directories.

Methods of Acquisition.

Sealed bidding: award is based only on price and price-related factors, and is made to the lowest, responsive, responsible bidder.

Negotiations (also called “competitive proposals”): award is based on stated evaluation criteria, one of which must be cost, and is made to the responsible offeror whose proposal offers either the lowest cost, technically acceptable solution to the government’s requirement, or the technical/cost trade-off, even if it is not lowest in cost. The basis for award (low-cost, technically-acceptable or trade-off), and a description of the all factors and major subfactors that the contracting officer will consider in making this determination, must be stated in the solicitation.

Simplified acquisition procedures: simplified acquisition procedures are for the acquisition of supplies, nonpersonal services, and construction in amounts less than the simplified acquisition threshold.

Sealed Bidding as a Method of Acquisition.

Sealed bidding procedures must be used if the four conditions enumerated in the Competition in Contracting Act exist. 10 U.S.C. § 2304(a)(2)(A); Racal Filter Technologies, Inc., B-240579, Dec. 4, 1990, 70 Comp. Gen. 127, 90-2 CPD ¶ 453.

1. Time permits the solicitation, submission, and evaluation of sealed bids;
2. Award will be made only on the basis of price and price-related factors;
3. It is not necessary to conduct discussions with responding sources about their bids; and
4. There is a reasonable expectation of receiving more than one sealed bid.

Use of sealed bidding results in little discretion in the selection of a source. Bids are solicited using Invitations for Bids (IFBs) under procedures that do not allow for pre-bid discussions with potential sources. A clear description/understanding of the requirement is needed to avoid having to conduct discussions. Sealed bidding requires more sophisticated contractors because minor errors in preparing a bid prevent the government from accepting the offer, because such errors are likely to make the bidder nonresponsive. Only fixed-price type contracts are awarded using these procedures. Sealed bidding procedures seldom are used during active military operations. The fluidity of a military operation generally requires discussions with responding offerors to explain our requirements and/or to assess their understanding of, and capability to meet, U.S. requirements. Accordingly, sealed bidding procedures rarely are used until the situation has stabilized. *See* FAR Part 14.

Negotiations (Competitive Proposals) as a Method of Acquisition.

Negotiations are used when the use of sealed bids is not appropriate. 10 U.S.C. § 2304(a)(2)(B). Negotiations permit greater discretion in the selection of a source, and allow consideration of non-price factors in the evaluation of offers, such as technical capabilities of the offerors, past performance history, etc. Offers are solicited by use of a Request for Proposals (RFP). Discussions with offerors permit better understanding of needs and capabilities. Negotiations permit the use of any contract type. Negotiations procedures also permit the use of letter contracts and oral solicitations to expedite awards of contracts and more rapidly fulfill requirements. *See* FAR Part 15.

Simplified Acquisition Procedures

“Simplified acquisition” refers to contractual actions up to \$100K in peacetime and during normal military exercises, or up to \$200K during a contingency operation as defined by 10 U.S.C. § 101(a)(13), or a humanitarian or peacekeeping operation, for contracts awarded and performed outside the United States. 10 U.S.C. § 2302(8); DFARS 213.000; Army Acquisition Letter (AL) 94-9. The Department of Defense has invoked this increased threshold during recent contingency operations, including during Operations Desert Storm/Desert Shield in the gulf region, Operation Restore Hope in Somalia, Operation Restore Democracy in Haiti, and during Operations in the Balkans. On 9 October 2001, DOD formally declared that Operation Enduring Freedom is a contingency operation for purposes of raising the threshold to \$200,000 for procurements OCONUS made in “direct support” of Enduring Freedom.⁶

About 95% of the contracting activity conducted in a deployment setting will be simplified acquisitions. The following are various methods of making or paying for these simplified purchases. Most of these purchases can be solicited orally, except for construction projects exceeding \$2000 and complex requirements. The types of simplified acquisition procedures likely to be used during a deployment are:

- (1) Purchase Orders. FAR Subpart 13.5; DFARS Subpart 213.5; AFARS Subpart 5113.302, *available at*: http://acqnet.saalt.army.mil/library/AFAR/AFARS_OCTOBER_2001.pdf.
- (2) Blanket Purchase Agreements (BPAs). FAR Subpart 13.2; DFARS Subpart 213.2; AFARS Subpart 5113.303.
- (3) Imprest Fund Purchases. FAR Subpart 13.305; DFARS Subpart 213.305; AFARS 5113.306.
- (4) Government Credit Card Purchases. AFARS Subpart 5113.270.
- (5) Accommodation checks/government purchase card convenience checks. DoD 7000.14-R, vol. 5, ch. 2, para. 0210; see also DFARS 213.270(c)(6) and 213.305-1(3).
- (6) Commercial Items Acquisitions. 10 U.S.C. § 22304(g)(1)(B); FAR 13.601.

Purchase Orders.

A purchase order is an **offer** to buy supplies or services, including construction. Purchase orders usually are issued only after requesting quotations from potential sources. Issuance of an order does not create a binding contract. A contract is formed when the contractor accepts the offer either in writing or by performance. In operational settings, purchase orders may be written using two different forms.

(1) Dep’t of Defense (DD) Form 1155. This is a multi-purpose form that can be used as a purchase order, blanket purchase agreement, receiving/inspection report, property voucher, or public voucher. It contains some contract clauses, but users must incorporate all other applicable clauses. FAR 13.507; DFARS 213.507. *See* clause matrix in FAR Part 52. When used as a purchase order, the KO may make purchases up to the simplified acquisition threshold. Only KOs are authorized to use this form.

(2) Standard Form (SF) 44. *See* Appendices A & B. This is a pocket-sized form intended for over-the-counter or on-the-spot purchases. Clauses are not incorporated. Use this form for “cash and carry” type purchases. Ordering officers, as well as KOs, may use this form. Reserve unit commanders may use the SF 44 for purchases not exceeding \$2,500 when a Federal Mobilization Order requires unit movement to a Mobilization Station or site, or where procurement support is not readily available from a supporting installation. DFARS 213.306. AFARS 5113.306. Conditions for use:

- As limited by appointment letter.

⁶ For any procurement to “facilitate the defense against terrorism or biological or chemical attack against the United States” using funds appropriated to DOD in FY 2002 or FY 2003, Congress has raised the micro-purchase threshold to \$15,000 and the simplified acquisition threshold to \$250,000 if operating inside the United States, and \$500,000 if operating outside the United States in support of a contingency operation. The Act also provides authority to treat any such purchase of biotechnology property or services as a commercial item acquisition. National Defense Authorization Act for Fiscal Year 2002, § 836.

- Away from the contracting activity.
- Goods or services are immediately available.
- One delivery, one payment.

Ordering officers may use SF 44s for purchases up to \$2,500 for supplies or services, except purchases up to the simplified acquisition threshold may be made for aviation fuel or oil (POL) and certain classified purchasing activities under E.O. 12333. A KO may make purchases up to the simplified acquisition threshold (\$100K normally, or \$200K if overseas in the theater where the SECDEF has declared a contingency).

Blanket Purchase Agreements (BPAs).

A BPA is a simplified method of filling anticipated repetitive needs for supplies or services essentially by establishing “charge account” relationships with qualified sources of supply. They are not contracts but merely advance agreements for future contractual undertakings. BPAs set prices, establish delivery terms, and provide other clauses so that a new contract is not required for each purchase. The government is not bound to use a particular supplier as it would be under a requirements contract. KO negotiates firm-fixed-prices for items covered by the BPA, or attaches to the BPA a catalog with pertinent descriptions/prices.

BPAs are prepared and issued on DD Form 1155 and must contain certain terms/conditions. FAR 13.203-1(j):

- (1) Description of agreement.
- (2) Extent of obligation.
- (3) Pricing.
- (4) Purchase limitations.
- (5) Notice of individuals authorized to purchase under the BPA and dollar limitation by title of position or name.
- (6) Delivery ticket requirements.
- (7) Invoicing requirements.

KOs may authorize ordering officers and other individuals to place calls (orders) under BPAs. DFARS 213.303, AFARS 5113.303. Existence of a BPA does not per se justify sole-source acquisitions/procurements. Consider BPAs with multiple sources. If insufficient BPAs exist, solicit additional quotations for some purchases and make awards through separate purchase orders.

Imprest Funds.⁷

An imprest fund is a cash fund of a fixed amount established by an advance of funds from a finance or disbursing officer to a duly appointed cashier. The cashier disburses funds as needed to pay for certain simplified acquisitions. Funds are advanced without charge to an appropriation, but purchases are made with notation on the receipts returned to the imprest fund cashier of the appropriation that will be used to reimburse the imprest fund for the amount of the purchase. See DoD 7000.14-R, vol. 5, ch. 2, para. 0209; DFARS 213.305-1. The maximum amount in a fund at any time is \$10,000. During an overseas contingency operation as defined in 10 U.S.C. 101 (a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8), imprest funds may be used for transactions at or below the micro-purchase threshold (\$2500). DFARS 213.305-3.

⁷ See note 4, *supra*, regarding the phased elimination of imprest funds.

Ordering officers, as well as KOs, may use the imprest fund procedures. Imprest fund cashiers, however, cannot be ordering officers and cannot make purchases using imprest funds.

Each purchase using imprest funds must be based upon an authorized purchase requisition. If materials or services are deemed acceptable by the receiving activity, the receiver annotates the supplier's sales document and passes it to the imprest fund cashier for payment.

Government Credit Card Program.

Authorized government credit card holders, including a KO, may use the cards to purchase goods and services up to \$2,500 per purchase, or \$25,000 outside the U.S. for commercial items, but not for work to be performed by workers recruited within the U.S. Cardholders may also use the cards to place task and delivery orders. FAR 13.301. On 1 November 2001, DOD raised the purchase card limit to \$200,000 for contingency, humanitarian, or peacekeeping operations. However, AFARS 5113.270 still retains the \$2,500 limitation for most card purchases. A KO may use the card as a method of payment for purchases up to the simplified acquisition threshold when used in conjunction with a simplified acquisition method. Funds must be available to cover the purchases. Special training for cardholders is required. AFARS Subpart 5113.270. Issuance of these cards to deploying units must be coordinated prior to deployment, because there is insufficient time to request and receive the cards once the unit receives notice of deployment.

Accommodation Checks/Purchase Card Convenience Checks.

Commands involved in a deployment may utilize accommodation checks and/or government purchase card convenience checks in the same manner as they are used during routine operations. Checks should only be used when Electronic Funds Transfer (EFT) or the use of the government purchase card is not possible. See DoD 7000.14-R, vol. 5, ch. 2, para. 0210; see also DFARS 213.270(c)(6) and 213.305-1(3). Government purchase card convenience checks may not be issued for purchases exceeding the micro-purchase threshold of \$2,500. See DoD 7000.14-R, vol. 5, ch. 2, para. 021001.E.1.

Commercial Items Acquisitions.

Much of our deployment contracting involves purchases of commercial items. The KO is authorized to use "special simple" commercial procedures to make commercial item acquisitions up to \$5,000,000. 10 U.S.C. § 2304(g)(1)(B); FAR 13.601. Under this procedure the KO may use any simplified acquisition method.

Simplified Acquisition Competition Requirements.

Competition requirements apply to simplified acquisitions as well as to larger procurements. The standard for simplified acquisitions is to obtain competition "to the maximum extent practicable," which ordinarily means soliciting quotes from sources within the local trade area. FAR 13.104. For new purchases up to \$2,500, only one oral quotation is required, if the KO finds the price to be fair and reasonable. FAR 13.202 (a)(2); Northern Virginia Football Officials Assoc., B-231413, Aug. 8, 1988, 88-2 CPD ¶ 120. The KO should distribute such purchases equitably among qualified sources. FAR 13.202; Grimm's Orthopedic Supply & Repair, B-231578, Sept. 19, 1988, 88-2 CPD ¶ 258. If practicable, solicit a quotation from other than the previous supplier before placing a repeat order.

For purchases between \$2500 and the simplified acquisition threshold (\$100K normally, \$200K during declared contingencies), obtain oral quotations from a reasonable number of sources. Omni Elevator, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248. Unless the action requires FAR 5.101 synopsis and an exception under FAR 5.202 is inapplicable, consider soliciting at least three sources. Whenever practicable, request quotes from two sources not included in the previous solicitation. FAR 13.104 (b). You normally should also solicit the incumbent contractor. J. Sledge Janitorial Serv., B-241843, Feb. 27, 1991, 91-1 CPD ¶ 225.

Use written solicitations for construction over \$2000 or when oral quotations are not feasible. If only one source is solicited, justify the absence of competition in writing.

Requirements aggregating more than the simplified acquisition dollar limitations may not be broken down into several purchases to permit the use of simplified acquisition procedures. FAR 13.103(b).

Subject to the following exceptions, the KO is not required to publicize contract actions that will not exceed the simplified acquisition threshold:

(1) Synopsizing in www.FedBizOpps.gov is required for contract actions expected to exceed \$25,000. FAR 13.105; 5.101. Public posting of the request for quotations for 10 days is required if the order is estimated to be between \$10,000 and \$25,000, except when ordering perishable subsistence items. 15 U.S.C. § 637(e); 41 U.S.C. § 416; FAR 5.101.

(2) For a CONUS contract action, if the order is estimated to exceed \$10,000, and only one source is expected to compete, publish notice of the Request for Quotations (RFQ) in www.FedBizOpps.gov. 41 U.S.C. § 416. KOs must also publish a synopsis of CONUS sole-source awards in FedBizOpps.gov. 15 U.S.C. § 637(e).

(3) There is no requirement to publish a synopsis of pending contract actions by defense agencies which will be made and performed outside the U.S., its possessions or Puerto Rico, and for which only local sources will be solicited. Many KOs forget the “local sources only” limitation. FAR 5.202(a)(12).

In evaluating quotations, if the KO receives a single quotation, the KO must verify price reasonableness (e.g., through obtaining another quote, or by comparison with established catalog prices) only when the requiring activity or the KO suspects or has information to indicate that the price may not be reasonable, or when the government is purchasing an item for which no comparable pricing information is available (e.g., an item that is not the same as, or similar to, other items recently purchased on a competitive basis). If a price variance between multiple quotations reflects a lack of adequate competition, the KO must document how he determined the price to be fair and reasonable. FAR 13.106(c).

Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the KO should inform the requiring activity of all facts regarding the quotation, and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

Use of Existing Contracts to Satisfy Requirements. Existing ordering agreements, indefinite delivery contracts, and requirements contracts may be available to meet recurring requirements, such as fuel and subsistence items. Investigate existence of such contracts with contracting offices of units and activities with continuing missions in the deployment region. For example, the Navy had an existing contract for the provision of shore services to its ships in the port of Mombasa, Kenya, which was used in lieu of new contracts to provide services to aircrews operating out of Mombasa during Operation Provide Relief.

The U.S. Army Material Command (AMC) has a cost-type contract known as LOGCAP (Logistics Civil Augmentation Program) which provides for comprehensive logistics and construction support to a deployed force anywhere in the world. By using this contract to provide logistics support to a deployed force, a commander can perform a military mission with a much smaller force than might otherwise be necessary, and without developing and awarding an entirely new contract to obtain required support. *See* AR 700-137.

LOGCAP is primarily designed for use where no treaties exist but can be used in CONUS⁸ as well as OCONUS. LOGCAP is designed to develop support for an arriving force in an austere environment to provide for basic needs such as water, sewage, electricity, etc. LOGCAP may also provide services such as force sustainment, construction, and other general logistics support. LOGCAP Homepage (Army AMC) is: http://www.amc.army.mil/dcs_logistics/lg-ol/infopage.html.

LOGCAP is an expensive contracting tool and should be used as a last resort. Examples of recent LOGCAP funding include: \$100 million in Somalia, \$122 million in Haiti, and over \$2.2 billion in the Balkans.⁹ These high costs

⁸ Operation Provide Refuge, the housing of Kosovar Refugees at Fort Dix, NJ, May-July 1999, was supported by LOGCAP.

⁹ Data is current through September 2000. Includes funding for the Bosnia Sustainment Contract, an outgrowth of the LOGCAP contract.

associated with LOGCAP contract have resulted in closer scrutiny by Congress. In a recent report, the GAO noted that commanders were unaware of the cost ramifications for what they were doing. In Bosnia, the unit commanders wanted to accelerate the base camp construction and required the contractor to fly in the plywood from the U.S. because there were insufficient supplies on the local markets. The commanders did not realize that the cost of plywood would cost them about \$86 per sheet because it only costs \$14.06 in the U.S. They thought they were paying only \$14.

Another contractual vehicle available for deployments is called LOGJAMMS contract (Logistics Joint Administrative Management Support Services). It is a task-order driven multiple award contract. This contract is administered by Forces Command (FORSCOM) and is geared to provide support to FORSCOM, U.S. Army Reserve Command, Third Army, and TRADOC, and others upon request. LOGJAMMS is an alternative to the LOGCAP contract. It provides much the same services as the LOGCAP and other Force Sustainment contracts, but is much broader in scope. The LOGJAMSS homepage is: <http://www.forscom.army.mil/aacc/LOGJAMSS/default.htm>.

As an alternative to LOGCAP, the Air Force Contract Augmentation Program (AFCAP). Similar to LOGCAP, AFCAP is primarily a civil engineering support contract. AFCAP can also provide limited services. AFCAP is a contract force multiplier to augment Civil Engineer and Services capabilities to support worldwide contingency planning and deployment operations principally in military operations other than war. AFCAP may also be used in base recovery operations as a result of natural disasters, accidents, or terrorist attacks. The AFCAP has been used to support a number of contingencies and was used to aid recovery efforts after Hurricane Georges struck Keesler AFB in 1998. The AFCAP homepage is: <https://wwwmil.afcesa.af.mil/>.

The U.S. Navy's Contingency Construction Capabilities (CONCAP) program is similar to AFCAP. CONCAP is a Navy construction contracting program to provide responsive contracting vehicle and a large civilian contractor ready to respond to contingencies or natural disasters anywhere in the world. CONCAP has been used in domestic support operations to aid recovery efforts in the wakes of Hurricanes Bertha and Fran in 1996, and Hurricanes Bonnie and Georges in 1998.

If LOGCAP or other existing contracts are used, you must take into account the following factors: (1) MACOM/MAJCOM must review the OPLAN to determine which contracts will be used and what, if any advanced procurement is going to take place; (2) recognize that there is a higher degree of risk in contractor performance during deployments; and (3) must account for the safety of contractor personnel.

Alternative Methods for Fulfilling Requirements. New and existing contracts are not the only method of meeting the needs of deployed military forces. The military supply system is the most common source of supplies and services. Cross-servicing agreements and host-nation support agreements exist with NATO, Korea, and other major U.S. allies. Similarly, under the Economy Act, other government agencies may fill requirements for deployed forces, either from in-house resources or by contract. Finally, service secretaries retain substantial residual powers under Public Law 85-804 which may be used to meet critical requirements that cannot be fulfilled using normal contracting procedures.

Host nation support and cross-servicing agreements as means of fulfilling the needs of deployed U.S. forces are addressed in 10 U.S.C. §§ 2341-50; DoD Dir. 2010.9; AR 12-16. These authorities permit acquisitions and transfers of specific categories of logistical support to take advantage of existing stocks in the supply systems of the U.S. and allied nations. Transactions may be accomplished notwithstanding certain other statutory rules related to acquisition and arms export controls. However, except during periods of active hostilities, reimbursable transactions (i.e., those where repayment in kind is not possible) are limited to a total of \$150M (credit) / \$200M (liability) per year for NATO and \$75M (credit) / \$60M (liability) per year for non-NATO allies. The usefulness of these arrangements may be limited when the host nation has not invited U.S. intervention, or when the U.S. deploys forces unilaterally.

The Economy Act (31 U.S.C. § 1535) provides another alternative means of fulfilling requirements. An executive agency may transfer funds to another agency, and order goods and services to be provided from existing stocks or by contract. For example, the Air Force could have construction performed by the Army Corps of Engineers, and the Army might have Dep't of Energy facilities fabricate special devices for the Army. Procedural requirements for Economy Act orders, including obtaining contracting officer approval on such actions, are set forth in FAR Subpart 17.5, DFARS 217.5, and DFAS-IN 37-1. A general officer or SES must approve Economy Act Orders placed outside DoD. See DFAS-IN 37-1, para. 12-7f.

Extraordinary contractual actions under Public Law 85-804 (50 U.S.C. §§ 1431-1435; FAR Part 50) may be taken under the broad residual authority of the SECARMY to initiate extraordinary contractual actions to facilitate national defense. Requiring activities may request that the Secretary use this authority. There are few limitations on use of these powers. FAR 50.203(a). Procedures for requesting use of these powers are found in FAR Subpart 50.4, DFARS Subpart 250.4, and AFARS Subpart 50.4. Congress still must appropriate funds needed to pay obligations incurred under this authority.

Leases of Real Property. The Army is authorized to lease foreign real estate at an annual rent of under \$250,000. 10 U.S.C. § 2675. Authority to lease is delegated on an individual lease basis. AR 405-10, para. 3-3b. Billeting services are acquired by contract, not lease. True leases normally are accomplished by the Army Corps of Engineers using area teams.

INTERNATIONAL LAW CONSIDERATIONS IN THE ACQUISITION OF SUPPLIES AND SERVICES DURING MILITARY OPERATIONS

We cannot rely only on the principles of international law for the acquisition of supplies and services to support military operations. Limitations under international law make it imperative that we normally acquire supplies and services using U.S. acquisition laws. Nevertheless, battlefield acquisition techniques (confiscation, seizure, and requisition) may prove a valuable means of supporting some of the needs of a deployed force when active combat or actual occupation of hostile territory occurs. Chapter 2 provides a summary of the international law principles that govern the acquisition of property while opposing an enemy force or in occupied territory.

U.S. Rights and Obligations Under International Law Relating to Battlefield Procurement of Goods.

The law of land warfare regulates the taking and use of property by military forces. The rights and obligations of military forces vary depending on the ownership of the property, the type of property, and whether the taking occurs on the battlefield or under military occupation. Certain categories of property are completely protected from military action (e.g., historic monuments, museums, and scientific, artistic, and cultural institutions).

Acquisition of Enemy Property in Combat.

Confiscation is the permanent taking or destruction of enemy public property found on the battlefield. HR (Hague Conv. Annex Reg.), art. 23, para. (g); HR, art. 53; Field Manual 27-10, Law of Land Warfare, paras. 59, 393-424 (July 1956) (hereinafter FM). When required by military necessity, confiscated property becomes the property of the capturing state. The concept of state ownership includes the requirement to preserve property. Confiscation is a taking without compensation to the owner. Thus, a commander may acquire the supplies of an enemy armed force and its government. Public buildings may also be used for military purposes. When military necessity requires it, if ownership is not known, a commander may treat the property as public property until ownership is determined.

Seizure is the temporary taking of private or state property. When the use of private real property on the battlefield is required by military necessity, military forces may temporarily use it without compensation. (Use of private real property is discouraged; try to use public real property [firehouses make excellent CPs]. Anything other than a transient use of private real property will require a lease [typically retroactive] concluded by the Corps of Engineers.) Private personal property, if taken, must be returned when no longer required, or else the user must compensate the owner. HR, art. 53; FM 27-10, paras. 406-10. Examples of property which might be seized include arms and ammunition in contractor factories; radio, TV, and other communication equipment and facilities; construction equipment; privately owned vehicles, aircraft, ships, etc.

To the maximum extent possible, avoid seizing private property. Use enemy public (government or military) property instead. If private property must be seized, give a receipt for the property, if possible, and record the condition of the property and the circumstances of seizure. Units should produce duplicate forms for this purpose, not only to document the seizure, but to notify operators and logisticians of the availability of the property. An example of such a form is reproduced at the end of this Chapter. Units likely to seize property (typically airborne and light units with few organic vehicles) should train on seizure, recordation, and reporting procedures. Vehicle seizure procedures should be in

the TACSOP of such units. Marking of seized vehicles (with spray paint or marker panels) should be addressed in the TACSOP to minimize the likelihood of fratricide.

Acquisition of Enemy Property in Occupied Territories.

An occupation is the control of territory by an invading army. HR, art. 42; FM 27-10, para. 351. Public personal property that has some military use may be confiscated without compensation. FM 27-10, para. 403. The occupying military force may use public real property, if it has some military use or is necessary to prosecute the war. FM 27-10, para. 401. However, no ownership rights transfer.

Private property capable of direct military use may be seized and used in the war effort. Users must compensate the owner at the end of the war. FM 27-10, para. 403.

DoD makes a distinction between those instances in which a contractual obligation has arisen and those in which the private owner must initiate a non-contractual claim for compensation. 25 Jan. 90 memo from Deputy General Counsel (Acquisition) to ASA (RDA) (two categories of claims set forth). The first category involves products or services acquired as result of express or implied in fact contract. The second category which gives rise to potential compensation claims arises when a government representative unilaterally takes possession of the property. In both cases, an owner may have extraordinary relief available (Pub. L. 85-804). In no case, however, is relief under Pub. L. 85-804, or under any other contractual remedy, available to pay for combat damage.

Requisition is the taking of private or state property or services needed to support the occupying military force. Unlike seizure, requisition can only occur upon the order of the local commander. Users must compensate the owner as soon as possible. FM 27-10, para. 417. The command may levy the occupied populace to support its force, i.e., pay for the requisition. Requisition is the right of the occupying force to buy from an unwilling populace. Requisitions apply to both personal and real property. It also includes services.

Article 2 Threshold. If a host nation government invites U.S. forces into its territory, the territory is not occupied, and U.S. forces have no right to take property (because the Law of War and the property rules therein have not been triggered). The Host Nation may agree to provide for some of the needs of U.S. forces that cannot be met by contracting. Examples: (1) Saudi Arabia in Operation Desert Shield/Storm (1990-91), (2) Haiti in Operation Uphold Democracy (1994-95), and (3) Bosnia-Herzegovina, in Operation Joint Endeavor (1995-96).

U.S. Rights and Obligations Under International Law Relating to Battlefield Procurement of Services. The law of war also regulates use of prisoners of war (PW's) and the local populace as a source of services for military forces. PWs and civilians may not be compelled to perform services of a military character or purpose.

Use of PWs as Source for Services in Time of War.

PWs may be used as a source of labor; however, the work that PWs may perform is very limited. Geneva Conv. for the Protection of PWs (GPW), art. 49; FM 27-10, paras. 125-133. PWs may not be used as source of labor for work of a military character or purpose. GPW, art. 49; FM 27-10, para. 126. The regulation governing PW labor is AR 190-8, which requires a legal review (with copy to OTJAG) of proposed PW labor in case of doubt concerning whether the labor is authorized under the law of war. Note that PWs may be used to construct and support (food preparation, e.g.) PW camps.

Use of Civilian Persons as Source for Services in Time of War.

Civilian persons may not be compelled to work unless they are over 18, and then only on work necessary either for the needs of the army of occupation, for public utility services, or for the feeding, sheltering, clothing, transportation, or health of the population of the occupied country. Geneva Conv. Relative to Protection of Civilian Persons in Time of War (GC), art. 51; FM 27-10, paras. 418-424. Civilians considered protected persons may not be compelled to take part in military operations against their own country. GC, art. 51; FM 27-10, para 418.

The prohibition against forced labor in military operations precludes requisitioning the services of civilian persons upon work directly promoting the ends of war, such as construction of fortifications, entrenchments, or military airfields; or transportation of supplies/ammunition in the Area of Operations. There is no prohibition against their being employed voluntarily and paid for this work. FM 27-10, para. 420.

Practical Considerations on Use of International Law Principles for Acquisition of Supplies and Services.

The uncertainty of these principles (confiscation, seizure, and requisition) as a reliable source for the acquisition of supplies and services make them a less-preferred means of fulfilling the requirements of U.S. forces than traditional contracting methods. However, these principles do provide an expedient complement to other acquisition techniques that should not be overlooked in appropriate circumstances. Before using these acquisition techniques, however, consider the impact that takings of private property or forced labor inevitably have on the populace. Consider also the difficulty in accurately computing compensation owed if accurate records do not exist (units must set up a system for recording takings of private property in SOPs if battlefield acquisitions are anticipated).

POLICING THE BATTLEFIELD.

The Grenada and Panama operations spawned a large number of irregular or unauthorized procurements and other actions with procedural defects. At the end of active hostilities, U.S. forces faced the problem of correcting errors made in acquisitions supporting combat units. Generally, resolution involved ratification, extraordinary contractual actions, and GAO claims procedures.

Ratification of Contracts Executed by Unauthorized Government Personnel. Only certain officials (chief of a contracting office, Principal Assistant Responsible for Contracting (PARC), Head of Contracting Agency (HCA)) may ratify agreements made by unauthorized persons, which bind the U.S. in contract. FAR 1.602-3; AFARS 5113.602-3. There are dollar limits on the authority to ratify unauthorized commitments:

Up to \$10,000 - Chief of Contracting Office

\$10,000 - \$100,000 - PARC

Over \$100,000 – HCA

These officials may ratify only when:

--The government has received the goods or services;

--The ratifying official has authority to obligate the U.S. now, and could have obligated the U.S. at the time of the unauthorized commitment;

--The resulting contract would otherwise be proper (a proper contract type, a contract not prohibited by law, etc.), and adequate funds are available, were available at the time of the unauthorized commitment, and have been available continuously since that time; and,

--The price is fair and reasonable.

Extraordinary Contractual Actions. If ratification is not appropriate, e.g., where no agreement was reached with the supplier, the taking may be compensated as an informal commitment. FAR 50.302-3. Alternatively, the supplier may be compensated using service secretary residual powers. FAR Part 50.

Requests to formalize informal commitments must be based on a request for payment made within 6 months of furnishing the goods or services, and it must have been impracticable to have used normal contracting procedures at the time of the commitment. FAR 50.203(d).

These procedures have been used to reimburse owners of property taken during the Korean War (AFCAB 188, 2 ECR § 16 (1966)); in the Dominican Republic (Elias Then, Dept. of Army Memorandum, 4 Aug. 1966); in Jaragua S.A., ACAB No. 1087, 10 Apr. 1968; and in Panama (Anthony Gamboa, Dep't of Army Memorandum, Jan. 1990).

General Accounting Office (GAO) Claims. GAO claims procedures provide another method of settling claims¹⁰ for which the legal authority or procedures are uncertain. The GAO has broad authority to settle claims against the U.S. See 31 U.S.C. § 3702(a); Claim of Hai Tha Trung, B-215118, 64 Comp. Gen. 155 (1984). The procedures are set forth in 4 C.F.R. Part 30, and in Title 4, GAO Policies and Procedures Manual for the Guidance of Federal Agencies. See also DFAS-IN 37-1, paras. 20-19 & 20-96.

Voluntary Creditors. Generally, government employees who make payments from private funds on behalf of the U.S. may not be reimbursed. See 31 U.S.C. § 1342; Voluntary Payments—Gov't Reimbursement Liability, B-115761, 33 Comp. Gen. 20 (1953). A limited exception to this rule may apply in cases of urgent, unforeseen emergencies. Reimbursement of Personal Expenditures by Military Member for Authorized Purchases, B-195002, May 27, 1980, 80-2 CPD ¶ 242. Circumstances authorizing reimbursement include protection of government property, Meals—Furnishing—General Rule, B-177900, 53 Comp. Gen. 71 (1973), and unforeseen impediments to completion of an urgent agency mission, Reimbursement of Personal Expenditures by Military Member for Authorized Purchases, B-195002, May 27, 1980, 80-2 CPD ¶ 242.

GAO claims procedures may be used to reimburse employees who have made payments which may fit within the above exceptions to the general rule. The case at 64 Comp. Gen. 155 involved a claim by a Vietnamese man that the GAO determined to be cognizable, but which was barred by a statute of limitations. The case at 33 Comp. Gen. 20 involved a person who submitted a voucher for \$13.50, \$9.00 of which was denied. A supervisor reimbursed that person the \$9.00 out of his own pocket, and claimed that money by letter to GAO (GAO denied recovery because supervisor volunteered payment, and proper way was for person himself to file directly with GAO for \$9.00). The case at 53 Comp. Gen. 71 involved a claim for the cost of providing food service to Federal Protective Services Officers; the GAO found it reimbursable on an emergency basis because the officers had to be on call to protect a federal building occupied by protesters. If the GAO believes that a meritorious claim cannot be paid because an appropriation is not available for its payment, GAO reports to Congress. 31 U.S.C. § 3702(d). This report may form the basis for congressional private relief legislation.

CONCLUSION

Planning is critical to the success of contracting operations in an operational setting. Identification and proper training of contracting personnel before deployment is essential. In addition to understanding the basic contracting rules that will apply during U.S. military operations, contracting personnel also must know basic fiscal law principles (see Chapter 12). Unauthorized commitments are easier to avoid than to correct through ratifications. Avoid them by putting contracting capability where it is needed on the battlefield. When they do occur, ensure that unauthorized commitments are detected and reported early while they are easier to correct.

¹⁰ Quantum meruit (unjust enrichment) claims no longer go to the GAO. These claims are adjudicated before DOHA (Defense Office of Hearings and Appeals). Quantum meruit claims should be submitted to the KO and then forwarded through channels with an administrative record/file to DOHA.

APPENDIX A

SF 44

INSTRUCTIONS FOR THE USE OF THE SF 44:

Instructions are located on the inside cover of the form booklet.

1. Filling out the Form

- (a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. SELLER'S NAME AND ADDRESS MUST BE PRINTED.
- (b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.
- (c) Enter project reference or other identifying description in the space captioned "PURPOSE." Also, enter proper accounting information, if known.

2. Distributing Copies

Copy No. 1 (Seller's Invoice)- Give to seller for use as the invoice or as an attachment to his commercial invoice.

Copy No. 2 (Seller's Copy of the Order)- Give to seller for use as a record of the order.

Copy No. 3 (Receiving Report-Accounting Copy)-

- (1) On over-the-counter transactions where the delivery has been made, complete receiving report section and forward this copy to the proper administrative office.
- (2) On other than over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.

Copy No. 4 (Memorandum Copy)- Retain in the book, unless otherwise instructed.

3. When Paying Cash at Time of Purchase

- (a) Enter the amount of cash paid and obtain seller's signature in the space provided in the seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.
- (b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instruction pertaining to handling receipts for cash payments.

SF 44

TOP HALF

| U.S. GOVERNMENT | | | |
|--|----------|-----------------------|--------|
| PURCHASE ORDER—INVOICE—VOUCHER | | | |
| DATE OF ORDER | | ORDER NO. | |
| PRINT NAME AND ADDRESS OF SELLER (Number, Street, City, and State) ★ | | | |
| P A Y E E | | | |
| FURNISH SUPPLIES OR SERVICES TO (Name and address) ★ | | | |
| SUPPLIES OR SERVICES | QUANTITY | UNIT PRICE | AMOUNT |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| AGENCY NAME AND BILLING ADDRESS ★ | | TOTAL | |
| | | DISCOUNT TERMS | |
| | | --- % --- DAYS | |
| | | DATE INVOICE RECEIVED | |
| ORDERED BY (Signature and title) | | | |

SF 44

BOTTOM HALF

| | |
|--|---|
| ORDERED BY (Signature and title) | |
| PURPOSE AND ACCOUNTING DATA | |
| PURCHASER— <i>To sign below for over-the-counter delivery of items</i> | |
| RECEIVED BY | |
| TITLE | DATE |
| SELLER— <i>Please read instructions on Copy 2</i> | |
| <input type="checkbox"/> PAYMENT RECEIVED \$ _____ | <input type="checkbox"/> PAYMENT REQUESTED \$ _____ |
| NO FURTHER INVOICE NEED BE SUBMITTED | |
| SELLER | DATE |
| BY _____ <i>(Signature)</i> | |
| I certify that this account is correct and proper for payment in the amount of \$ _____ | DIFFERENCES ACCOUNT VERIFIED: CORRECT FOR |
| BY _____ <i>(Authorized certifying officer)</i> | |
| PAID BY <input type="checkbox"/> CASH | DATE PAID |
| OR _____ <i>(Check No.)</i> | VOUCHER NO. |
| * PLEASE INCLUDE ZIP CODE | 1. SELLER'S INVOICE <i>(See Instructions on Copy 2)</i> |
| STANDARD FORM 44a (Rev. 10-83) PRESCRIBED BY GSA, FAR (48 CFR) 53.213(c) | |

APPENDIX B

PROPERTY CONTROL RECORD BOOK

**FOR USE IN DOCUMENTING THE
SEIZURE OF PROPERTY ACQUIRED BY
MILITARY NECESSITY**

**THESE ARE CONTROLLED, SERIAL-NUMBERED DOCUMENTS.
USE STRICTLY IN ACCORDANCE WITH INSTRUCTIONS ON
INSIDE COVER. COPIES 1 (WHITE) 2 (BLUE) AND 3 (PINK) SHALL
BE DISTRIBUTED WHEN USED; COPY 4 (GREEN) SHALL REMAIN
ATTACHED TO THIS BOOK AT ALL TIMES.**

INSTRUCTION TO COMMANDERS

1. You must accomplish your mission and ensure the safety of the lives and equipment entrusted to you. You must also obey the law and respect the lives and property of the local population.
2. During combat operations, international law allows you to seize property if you have valid military necessity. Seizing private or public property for mere convenience is unlawful. You may not leave civilians without adequate food, clothing, shelter, or medical supplies. **COMBAT OPERATIONS DO NOT GIVE YOU LICENSE TO LOOT**. Improper seizure of property may result in personal liability.
3. This Property Control Record is used to document seizure of property on the battlefield by U.S. Armed Forces. It is very important that the form be filled out completely, legibly, and accurately. Property should be described in as much detail as possible. Get photographs if you can!
4. After you have completed this form, give Copy 1 (white) to the property owner, if available; forward Copy 2 (blue) to your battalion S-4. Copy 3 (pink) stays with the property that was seized and Copy 4 (green) remains attached to this book. Fill in the Seizure Record inside the back cover.
5. Direct questions about use of this form to the nearest judge advocate.

Seizure Record

[illegible]

RECEIPT

This is a receipt for your property that has been used or taken by the Armed Forces of the United States of America. The unit commander determined that this property was essential to ensure the success of the mission or to protect the safety of the soldiers of his command. This receipt may be used to redeem your property or document any claim.

I acknowledge receipt of this document.

Name _____

Address _____

Ceci est une recette pour votre propriété qui était utilisée ou prise par l'Armée des États-Unis. Le commandant a déterminé que cette propriété a été nécessaire d'assurer le succès de la mission ou a protéger la sécurité des soldats de son commandement. Cette recette peut-être utilisée pour la remboursement pour votre propriété ou pour documenter quel que réclamation

J'ai reçu ce document document.

Nom: _____

Adresse: _____

DOCUMENT NO. 000221
PROPERTY CONTROL BOOK

COUNTRY _____

GRID _____ DATE _____

1. Owner's name _____

2. Owner's Address _____

3. Reason for military necessity _____

4. Description of property _____

5. Condition of property _____

6. Remarks _____

Signature _____

Printed name _____

Rank _____ SSN _____

Unit _____